



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

March 30, 2011

Ms. Katie Lentz  
Open Records  
Williamson County Sheriff's Office  
508 South Rock Street  
Georgetown, Texas 78626

OR2011-04364

Dear Ms. Lentz:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 413096.

The Williamson County Sheriff's Office (the "sheriff") received two requests for information pertaining to a specified incident. You claim that the submitted information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses section 261.201(a) of the Family Code, which provides as follows:

(a) Except as provided by Section 261.203, the following information is confidential, is not subject to public release under chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report.
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers

used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). You assert the submitted information was used or developed in an investigation of allegations of child abuse or neglect. *See id.* § 261.001(1) (defining “abuse” and “neglect” for purposes of Family Code ch. 261); *see also id.* § 101.003(a) (defining “child” for purposes of this section as person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes). We note that the submitted information reveals the incident to which the submitted information relates was referred to the Child Protective Services Division of the Texas Department of Family and Protective Services (“CPS”) and some of the submitted information was used by CPS in their investigation. Based on your representations and our review of the submitted information, we find the submitted incident report and the CPS intake report, which we have marked, fall within the scope of section 261.201(a) of the Family Code. Accordingly, the sheriff must withhold the information we have marked in its entirety under section 552.101 of the Government Code. Upon review, we find you have failed to demonstrate how the remaining information, which consists of a use of force memorandum and related photographs, was, in and of itself, used by the sheriff or CPS in an investigation of child abuse or neglect. As such, this information may not be withheld under section 552.101 in conjunction with section 261.201.

Section 552.108 of the Government Code provides in relevant part:

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

...

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov’t Code §§ 552.108(a)(1), (b)(1). A governmental body claiming subsection 552.108(a)(1) or subsection 552.108(b)(1) must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See id.* §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Subsection 552.108(a)(1) protects information, the release of which would interfere with a particular pending criminal investigation or prosecution, while subsection 552.108(b)(1)

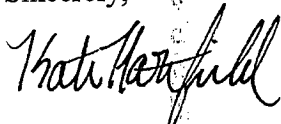
encompasses internal law enforcement and prosecution records, the release of which would interfere with on-going law enforcement and prosecution efforts in general. We note the use of force memorandum and the related photographs are administrative records. Section 552.108 is generally not applicable to records that are purely administrative in nature and do not involve the investigation or prosecution of crime. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.); *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor to section 552.108 not applicable to internal investigation that did not result in criminal investigation or prosecution). You state the remaining information relates to pending criminal prosecutions by the Williamson County Attorney's Office, which has requested that the information at issue not be released. You further state that release of the information at issue would interfere with the pending prosecutions. Upon review, we find that section 552.108(a)(1) is applicable to the remaining information. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975)(court delineates law enforcement interests that are present in active cases), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Accordingly, the sheriff may withhold the remaining information under section 552.108(a)(1).

In summary, the sheriff must withhold the incident report and the CPS intake report, which we have marked, under section 552.101 in conjunction with section 261.201 of the Family Code. The sheriff may withhold the remaining information under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at [http://www.oag.state.tx.us/open/index\\_orl.php](http://www.oag.state.tx.us/open/index_orl.php), or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free at (888) 672-6787.

Sincerely,



Kate Hartfield  
Assistant Attorney General  
Open Records Division

KH/em

Ref: ID# 413096

Enc. Submitted documents

c: Requestor  
(w/o enclosures)